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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES A. ROBERTSON

Appeal 2014-009605¹
Application 12/636,390
Technology Center 3600

Before: MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
MICHAEL W. KIM, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 1–15, 17, 18, 20, and 22–25. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates generally to remote medical examinations.
Spec. para 1.

¹ The Appellant identify Verizon Communications Inc. as the real party in interest. Appeal Br. 1.

Claim 1 is illustrative:

1. A method comprising:
receiving by a user equipment belonging to a user via a communication network position data corresponding to a visible mark to be projected onto a human subject who is a patient;
initiating by the user equipment projection of the mark onto the subject, wherein the mark specifies placement of a medical sensor onto the subject without onsite presence of a healthcare provider; and
collecting measurement data from the medical sensor coupled to the subject at the mark.

Claim 24 is rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 1–15, 17, 18, 20, and 23–25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cosman (US 2002/0065461 A1, pub. May 30, 2002) and Gopinathan (US 7,860,725 B2, iss. Dec. 28, 2010).

Claim 22 is rejected under 35 U.S.C. § 103(a) as unpatentable over Cosman, Gopinathan, and Konno (US 2006/0251408 A1, pub. Nov. 9, 2006).

We AFFIRM and enter a NEW GROUND of rejection pursuant to 37 C.F.R. § 41.50(b).

ANALYSIS

Rejection of Claim 24 under 35 U.S.C. § 112

We are persuaded by Appellant’s argument that the ordinary artisan would understand the meaning of the claim. Appeal Br. 6. The Examiner does not respond to the argument. We agree with Appellant that the ordinary artisan would interpret the later “marks” as referring to the earlier “various marks.”

For this reason, we do not sustain the rejection of claim 24 under 35 U.S.C. § 112, second paragraph.

Claims 1–10, 12–15, 17, 18, 20, and 23–25 under 35 U.S.C. § 103(a)

Appellant argues independent claims 1, 6, 12, and 17 together as a group (Appeal Br. 12), so we select independent claim 1 as representative. See 37 C.F.R. § 41.37(c)(1)(iv).

We are not persuaded by Appellant’s argument that the marks in Cosman do not “specif[y] placement of a medical sensor onto the subject” as claimed, because, as essentially argued, the devices in Cosman point at the subject rather than come into contact with the patient. Appeal Br. 7–10.

Cosman discloses projecting a grid onto the surface of a patient, shown by elements 115 and 117 in Figure 6, shown below:

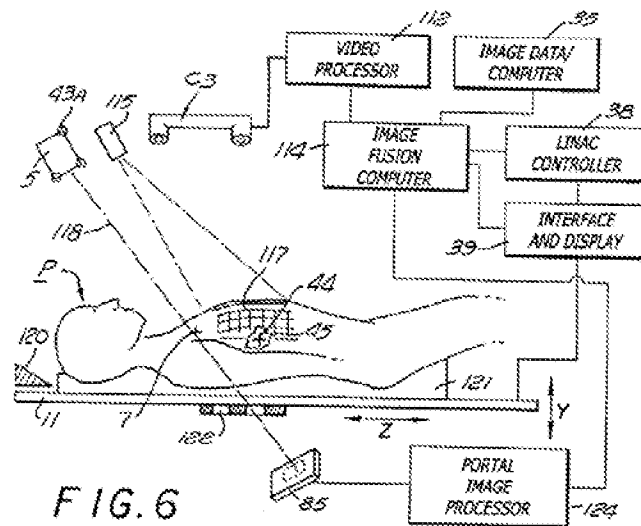


Figure 6 of Cosman showing illumination system 115 projecting a visible grid 117 onto a patient P

The grid serves as a marker for purposes of registration of the body anatomy. See Cosman paras. 75, 85. The grid is used for aiming diagnostic devices, such as to receive “image scan data taken from CT, MR, ultrasound,

X-ray, PET, simulator, or other modality.” *Id.* at paras. 75, 91. Cosman, thus, discloses the claimed projected mark, but primarily discloses diagnostic sensors that are in the vicinity of the patient, aimed at the patient, such as an x-ray machine, rather than being in contact with the patient while gathering sensory data. One machine in Cosman’s list, however, is an exception: the ultrasound, which is typically in contact with a patient via an applied gel. Cosman, thus, meets the claim language of “projection of the mark onto the subject, wherein the mark specifies placement of a medical sensor onto the subject . . . ; and collecting measurement data from the medical sensor coupled to the subject at the mark.”

Cosman does not necessarily disclose “without onsite presence of a healthcare provider,” which is why the Examiner appears to have looked to Gopinathan. Answer 3–4. We discern that this is because an ultrasound is not a device typically operated by someone who is not a “healthcare provider.”

Gopinathan, however, discloses a patient-wearable device 12 that senses data, such as pulse rate, blood pressure, EKG, blood oxygen saturation, and temperature of patient when placed directly on the patient’s body by the patient. Gopinathan col. 5, ll. 10–12; *see also* col. 13, ll. 18–34.

We are persuaded that it would, thus, have been obvious to substitute the wearable device of Gopinathan, which senses while in contact with the body, in place of the sensor machines of Cosman, with a remote healthcare provider also in Gopinathan. *See* Gopinathan col. 13, ll. 26–29. Therefore, the combination accounts properly for the claimed language of “projection of the mark onto the subject, wherein the mark specifies placement of a medical sensor onto the subject without onsite presence of a healthcare

provider; and collecting measurement data from the medical sensor coupled to the subject at the mark.”

We are not persuaded by Appellant’s argument that the Examiner’s motivation to combine Gopinathan’s remote, virtual consultation with Cosman is flawed, because the cited section only refers to making repeated office visits easier so that few antibiotics are prescribed, which would not require remote sensing. Appeal Br. 10–11.

Instead, we discern that the ordinary artisan would recognize the benefit of using Gopinathan’s direct-contact sensor and remote physician guidance, with the aiming method of Cosman, without the requirement that this be done in a situation to avoid antibiotic prescriptions. Gopinathan teaches, for example, the general benefit that “instead of a patient traveling to see a doctor, the doctor can virtually come to the patient and maintain a face-to-face relationship even if cities, countries, or continents separate them.” Gopinathan col. 3, ll. 5–8, col 4, ll. 25–30.

Appellant argues placing the glove from Gopinathan in the path of the x-ray machine of Cosman would impede the x-ray machine and render Cosman unsuitable for its intended purpose. Appeal Br. 11–12. However, we are not persuaded by Appellant’s argument, because substituting Gopinathan’s device for Cosman’s device, as indicated above, would not have this effect.

We also are not persuaded by Appellant’s arguments that the cited marks in Cosman are not on the patient but instead on the instrumentation, and, thus, do not signify the location for placement of a direct-contact sensor on the patient. Reply Br. 3–4. As we noted above, Cosman discloses an

embodiment with grid image 117 projected onto the patient, which is used in locating medical devices.

We finally are not persuaded by Appellant's arguments that neither of the cited references discloses a motivation to combine their teachings. Reply Br. 5–6. To the extent Appellant seeks an explicit suggestion or motivation in the reference itself, this is no longer the law in view of the Supreme Court's recent holding in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). In any case, the Examiner provides a rationale for the modification, with explicitly cited support from Gopinathan. Ans. 4.

For these reasons, we sustain the rejection of independent claims 1, 6, 12, and 17. We also sustain the rejection of dependent claims 2–5, 7–10, 13–15, 18, 20, and 23–25 rejected along with their respective independent claim 1, because they were not argued separately. Appeal Br. 12.

However, because we rely on the projected image in paragraph 75 of Cosman, and the sensor device of Gopinathan, rather than the portions of Cosman and Gopinathan cited by the Examiner, we designate our affirmance as a new ground of rejection.

Dependent Claim 11

Dependent claim 11 recites an apparatus, “wherein the apparatus is a mobile phone and further comprises: a camera coupled to the processor and configured to generate the image; and a projector coupled to the processor and configured to project the mark.” Claim 11 depends indirectly from claim 8, which specifies a device that projects a mark also will “cause capturing of an image of the subject.”

We are not persuaded by Appellant's argument that the Examiner's finding of a cell phone in Gopinathan, substituted into Cosman, would require converting the entire x-ray machine in Cosman into a mobile phone. Appeal Br. 12–13. Based on our findings above, it is not the x-ray machine of Cosman, or the glove sensor device of Gopinathan, that is substituted with a mobile phone, but rather the cameras and projector 115 that are located in a mobile phone. We are persuaded that one of ordinary skill would have known that a simple projector, and image-capture device such as a camera, would have been combinable into a mobile phone, so as to realize the benefits of a hand-held device. *See* Ans. 7. They would replace the video camera of Cosman (para. 91), not the x-ray machine.

For this reason, we sustain the rejection of dependent claim 11.

Dependent Claim 22

Appellant argues Konna fails to overcome the alleged deficiencies of Cosman and Gopinathan of independent claim 1, from which claim 22 ultimately depends. Appeal Br. 13; *see also* Reply Br. 7–8. Because we find no deficiencies, we sustain the rejection of dependent claim 22.

DECISION

We AFFIRM the rejections of claims 1–15, 17, 18, 20, and 22–25 under 35 U.S.C. § 103(a).

We REVERSE the rejection of claim 24 under 35 U.S.C. § 112.

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b) (2008). 37 C.F.R. § 41.50(b) provides “[a] new ground of

rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED; 37 C.F.R. § 41.50(b)